

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2010-0538

MANDATORY PENALTY
IN THE MATTER OF
SACRAMENTO COUNTY WATER AGENCY
WATER DISTRIBUTION MAINTENANCE
SACRAMENTO COUNTY

This Complaint is issued to the Sacramento County Water Agency (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements Order R5-2008-0081 (NPDES No. CAG995001).

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds the following:

1. On 16 June 2000, the Central Valley Water Board adopted Waste Discharge Requirements Order 5-00-175 to regulate dewatering and other low threat discharges to surface waters.
2. On 12 June 2008, the Central Valley Water Board adopted Waste Discharge Requirements Order R5-2008-0081 (Low Threat General Order) to regulate dewatering and other low threat discharges to surface waters. The Low Threat General Order rescinded and replaced Order 5-00-175.
3. The Discharger was previously covered under Order 5-00-175 and was granted automatic coverage under R5-2008-0081 for 180 days (through 9 December 2008).
4. On 13 May 2010, Central Valley Water Board staff issued the Discharger a draft Record of Violations for the time period of 1 July 2008 through 31 January 2009. On 15 June 2010, the Discharger responded and disagreed with the alleged January 2009 violations, stating that it did not have coverage under the Low Threat General Order after 9 December 2008. Staff agreed in a letter dated 30 August 2010 and has changed the Record of Violations as shown in Attachment A. This Complaint covers the period of 1 July 2008 through 9 December 2008.
5. CWC section 13385 subdivisions (h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385 subdivision (h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

CWC section 13385 subdivision (h)(2) states:

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more, or for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

CWC section 13385 subdivision (i)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

(A) Violates a waste discharge requirement effluent limitation.

(B) Fails to file a report pursuant to Section 13260.

(C) Files an incomplete report pursuant to Section 13260.

(D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

6. CWC section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

7. The Low Threat General Order, Paragraph V.A.1.a states:

a. The discharge of pollutants from dewatering and other low threat discharges shall not exceed the following effluent limitations:

Table 3. Effluent Limitations

Parameter	Units	Effluent Limitations		
		Average Monthly	Weekly Average	Maximum Daily
Total Suspended Solids	mg/L	10	15	30

8. According to the Discharger's self-monitoring reports, the Discharger committed four (4) serious Group I violation of the above effluent limitations contained in the Low Threat General Order during the period from 1 July 2008 through 9 December 2008. These violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than forty percent (40%). The mandatory minimum penalty for these serious violations is **twelve thousand dollars (\$12,000)**.
9. According to the Discharger's self-monitoring reports, the Discharger committed one (1) non-serious violation of the above effluent limitations contained in the Low Threat General Order during the period from 1 July 2008 through through 9 December 2008. This violation is not subject to mandatory penalties under CWC section 13385(i)(1) because it was not preceded by three three similar violations within a 180-day period.
10. The total amount of the mandatory penalties assessed for the cited violations is **twelve thousand dollars (\$12,000)**. A detailed list of the violations is included in Attachment A, a part of this Complaint.
11. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321 subdivision (a)(2).

SACRAMENTO COUNTY WATER AGENCY IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **twelve thousand dollars (\$12,000)**.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **8/9/10 December 2010**, unless any of the following occurs by **20 October 2010**:
 - a) The Discharger waives the hearing by completing the attached form (checking off the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **twelve thousand dollars (\$12,000)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
 - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.

3. If a hearing on this matter is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

If this matter proceeds to hearing, the Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

/s/

PAMELA C.CREEDON, Executive Officer

20 September 2010

Date

Attachment A: Record of Violations

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Sacramento County Water Agency (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2010-0538 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

☐ **(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)**

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **twelve thousand dollars (\$12,000)** by check that references "ACL Complaint R5-2010-0538." made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **20 October 2010**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

☐ **(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

☐ **(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2010-0538

Sacramento County Water Agency
Drinking Water Distribution Systems

RECORD OF VIOLATIONS FOR MANDATORY PENALTIES
(Data and reports submitted under Monitoring and Reporting Program R5-2008-0081)

Effluent Limitation Violations (1 July 2008 – 9 December 2008)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	22-Jul-08	TSS	mg/L	30	37	maximum daily	3	826268
2	20-Nov-08	TSS	mg/L	30	78	maximum daily	1	826269
3	21-Nov-08	TSS	mg/L	30	170	maximum daily	1	826270
4	22-Nov-08	TSS	mg/L	15	124	weekly average	1	826271
5	30-Nov-08	TSS	mg/L	10	41	average monthly	1	826272

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>12/09/2008</u>
Group I Serious Violations:	4
Group II Serious Violations:	0
Non-Serious Exempt from MMPs:	1
Non-serious Violations Subject to MMPs:	0
<u>Total Violations Subject to MMPs:</u>	<u>4</u>

Mandatory Minimum Penalty = (4 serious Violation + 0 Non-Serious Violations) x \$3,000 = \$12,000